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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re R.M., a Person Coming Under the Juvenile
Court Law.

PEOPLE OF THE STATE OF CALIFORNIA,
Petitioner and Respondent,
v.

R.M.,
Defendant and Appellant.

A133763

(Alameda Super. Ct.
No. SJ-11-017216)

On June 22, 2011, 15-year-old R.M. and three minor co-participants robbed a 14-year-old boy. As a result, the juvenile court adjudged R.M. to be a ward of the court, after it sustained jurisdictional allegations that included a felony allegation of robbery and a felony allegation of receiving stolen property. On appeal R.M. claims the court erred in sustaining both of these allegations, since a person cannot be convicted for both the taking and the receiving of the same property. He asks that we direct the juvenile court to vacate the sustained allegation for receiving stolen property, or, alternately, to exercise its discretion to declare that sustained allegation to be misdemeanor rather than a felony.

We reverse the jurisdictional order to the extent it sustained as true the allegation of receiving stolen property, direct the juvenile court to make appropriate corrections to that order and the dispositional order, and affirm both orders in all other respects.

BACKGROUND

On June 22, 2011, 14-year-old D.P. was walking home in the City of Alameda when he was accosted by four minor males. One of them put D.P. in a choke hold, and another checked his pockets, taking an iPod and a mobile phone. D.P.'s mother called the police after he came home. Officers located and eventually detained four suspects matching the descriptions given by D.P. One of them was R.M., who was found to be carrying D.P.'s mobile phone. An officer found D.P.'s iPod discarded between two parked vehicles on the street along which the four suspects had initially fled when police first spotted them.

Two days later the prosecutor filed a wardship petition under Welfare and Institutions Code section 602, subdivision (a).¹ It alleged R.M. had committed: (count 1) a felony violation of Penal Code section 211 (robbery); (count 2) a felony violation of Penal Code section 496 (receiving stolen property); and (count 3) a misdemeanor violation of Penal Code section 148, subdivision (a) (resisting arrest).

In its minute order entered October 19, 2011, at the conclusion of the jurisdictional hearing, the juvenile court found all three counts to be true beyond a reasonable doubt. In that order the court set R.M.'s maximum period of confinement at six years.

After the dispositional hearing on November 2, 2011, the court's minute order reiterated the October 19 ruling sustaining all three counts. The court then adjudged R.M. to be a ward of court, and placed him under the supervision of the Probation Office, to reside at home with his mother. Conditions of his probation included 120 days of electronic monitoring, and participation in a program for aggressive offenders.

This appeal followed. (See § 800, subd. (a).)

¹ Further statutory references are to the Welfare and Institutions Code unless otherwise specified.

DISCUSSION

Penal Code section 496, proscribing the knowing receipt of stolen property, provides that “no person may be convicted both pursuant to this section and of the theft of the same property.” (Pen. Code, § 496, subd. (a).) If a person is convicted of both theft and receiving stolen property, and both convictions involve the same property, the conviction for receiving stolen property cannot stand. (*People v. Ceja* (2010) 49 Cal.4th 1, 3-4.) Robbery is a form of aggravated theft. (*People v. Gomez* (2008) 43 Cal.4th 249, 254.)

R.M. argues that these principles apply in his case, because the sustained allegations for robbery and receiving stolen property both involved the same iPod and mobile phone. We agree, as does the Attorney General, and conclude the sustained felony allegation of receiving stolen property cannot stand.

Given our conclusion, it is unnecessary to address R.M.’s alternate claim—that we remand and direct the juvenile court to exercise its discretion and declare expressly whether the sustained allegation for receiving stolen property is a misdemeanor or a felony. (See § 702; *In re Manzy W.* (1997) 14 Cal.4th 1199, 1203-1204.)

DISPOSITION

The jurisdictional order of October 19, 2011, is reversed to the extent it finds true beyond a reasonable doubt the felony allegation for receiving stolen property set out in count 2 of the petition. The juvenile court is directed to strike the finding sustaining count 2 as true beyond a reasonable doubt, both from that order and the dispositional order of November 2, 2011, to dismiss count 2, and to recalculate, as appropriate, the maximum period of confinement set out in the order of October 19, 2011. As amended, both orders are affirmed in all other respects.

Banke, J.

We concur:

Marchiano, P. J.

Margulies, J.